

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

CIVIL ACTION NO. 3:17-cv-05806-RJB

STIPULATED MOTION TO SEAL
DOCUMENTS AND PROPOSED
ORDER

I. INTRODUCTION

The Parties, by and through their respective counsel, and in compliance with Local Civil Rule (LCR) 5(g) and 10(g), submit this stipulated joint motion to permit Washington to file, under seal, the unredacted Second Supplemental Expert Report of Peter Nickerson, Ph.D., excluding appendices (Trial Ex. 562) (the “Report”). Dr. Nickerson’s report discusses and reflects information that Defendant The GEO Group, Inc. (GEO) has designated “Confidential” under the terms of the Stipulated Protective Order, ECF No. 70. Dr. Nickerson’s report is Exhibit B to the Declaration of Lane Polozola in Support of Washington’s Response to GEO’s Motions in Limine.

The Stipulated Protective Order entered in this matter, ECF No. 70, requires Washington to file under seal material GEO designates “Confidential” if the confidentiality designation is not withdrawn. To that end, Washington advised GEO that it intended to file Dr. Nickerson’s report with Washington’s Response to GEO’s Motions in Limine, and requested that GEO agree

1 that the Report could be filed publicly. GEO maintains that the underlying information should
 2 retain its “Confidential” designation and therefore, that Dr. Nickerson’s report should be filed
 3 under seal. As a result, Washington files this joint motion to ensure compliance with the
 4 Stipulated Protective Order and LCR 5(g).

5 The Court should authorize the filing of Dr. Nickerson’s unredacted report under seal for
 6 purposes of considering Washington’s Response to GEO’s Motions in Limine. Filing that report
 7 under seal complies with Washington’s obligations under the Stipulated Protective Order,
 8 protects against disclosure of GEO’s asserted confidential information, and supports the Court’s
 9 ability to make informed decisions about the parties’ arguments.

10 II. AUTHORITY

11 This motion is brought in accordance with Federal Rule of Civil Procedure 26(c), LCR
 12 26(c), LCR 5(g), LCR 10(g), and the terms of the Stipulated Protective Order, ECF No. 70.

13 Rule 26(c) provides for the entry of “any order which justice requires to protect a party
 14 or person from annoyance, embarrassment, oppression or undue burden or expense.” Pursuant
 15 to LCR 26(c), the Stipulated Protective Order protects specific categories of confidential,
 16 proprietary, or private information, but “does not presumptively entitle the parties to file
 17 confidential information under seal.” LCR 26(c)(2); ECF 70 at 2, ¶ 1.

18 GEO’S STATEMENT RE LCR 5(g)(3)(B)

19 GEO has designated the Nickerson Report as “Confidential” consistent with the text of
 20 the Protective Order because it has a good faith belief that public disclosure of the Report (and
 21 the documents cited therein) will cause financial, competitive, or other serious harm to GEO or
 22 individuals employed by, or in the custody of, GEO. The Report (and its incorporated
 23 attachments) contain confidential business information including GEO’s financial summaries,
 24 information about individual detainees, information about GEO’s pricing models, and
 25 information about GEO’s sensitive staffing plans. If such information were disclosed to the
 26 public, GEO will suffer serious business harm because its competitors could use the pricing,

1 staffing, or other sensitive business information to unfairly compete against GEO and siphon
 2 away its business. *See, e.g., Seiter v. Yokohama Tire Corp.*, No. C08-5578 FDB, 2009 WL
 3 2461000, at *2 (W.D. Wash. Aug. 10, 2009) (holding the defendant established good cause for
 4 protective order due to potential competitive harm from disclosure of pricing policies and other
 5 confidential business practices). In addition, GEO would suffer financial and potentially legal
 6 consequences if it disclosed personal information about the detainees in violation of The Privacy
 7 Act of 1974, 5 U.S.C. § 552a. Further, ICE has designated some information that GEO produced
 8 as “Confidential” and GEO lacks the ability to withdraw those designations.

9 **III. CERTIFICATION OF COUNSEL**

10 The parties certify, pursuant to LCR 5(g)(3)(A), that counsel for Washington, Lane
 11 Polozola, and counsel for GEO, Colin Barnacle and Adrienne Scheffey, conferred on March 20
 12 and 23, 2020, regarding the need to file Dr. Nickerson’s unredacted report under seal based on
 13 its inclusion of information GEO has designated as “Confidential.” GEO confirmed that the
 14 underlying information should retain its “Confidential” designation and that Dr. Nickerson’s
 15 report should be filed under seal. The parties have jointly participated in the preparation and
 16 submission of this motion.

17 **IV. CONCLUSION**

18 The parties, by and through their counsel, agree to and request that the Court enter the
 19 Order below.

20
 21 //

22
 23 //

24
 25 //
 26

1 Dated this 23rd day of March 2020.

2 Jointly submitted,

3 ROBERT FERGUSON
4 Attorney General of Washington

AKERMAN LLP

5 s/ Lane Polozola

6 MARSHA CHIEN, WSBA No. 47020
7 ANDREA BRENNEKE, WSBA No. 22027
8 LANE POLOZOLA, WSBA No. 50138
9 PATRICIO A. MARQUEZ, WSBA No.
10 47693
11 Assistant Attorneys General
12 Office of the Attorney General
13 800 Fifth Avenue, Suite 2000
14 Seattle, WA 98104
15 (206) 464-7744
16 marsha.chien@atg.wa.gov
17 andrea.brenneke@atg.wa.gov
18 lane.poloza@atg.wa.gov
19 patricio.marquez@atg.wa.gov

20 *Attorneys for Plaintiff State of Washington*

s/ Adrienne Scheffey

Colin L. Barnacle (Admitted *pro hac vice*)
Ashley E. Calhoun (Admitted *pro hac vice*)
Adrienne Scheffey (Admitted *pro hac vice*)
1900 Sixteenth Street, Suite 1700
Denver, Colorado 80202
Telephone: (303) 260-7712
Facsimile: (303) 260-7714
Email: colin.barnacle@akerman.com
Email: ashley.calhoun@akerman.com
Email: adrienne.scheffey@akerman.com

III BRANCHES LAW, PLLC

Joan K. Mell, WSBA #21319
1019 Regents Boulevard, Suite 204
Fircrest, Washington 98466
Telephone: (253) 566-2510
Facsimile: (281) 664-4643
Email: joan@3brancheslaw.com

*Attorneys for Defendant The GEO Group,
Inc.*

[PROPOSED] ORDER

The Court, having considered the representations and stipulations of counsel set forth above, and finding good cause, hereby GRANTS the Joint Motion to Seal and authorizes the filing of Exhibit B to the Declaration of Lane Polozola In Support of Washington's Response to GEO's Motions in Limine to be filed under seal.

IT IS SO ORDERED

Dated this ____ day of _____, 2020.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 23rd day of March 2020, in Seattle, Washington.



Caitilin Hall
Legal Assistant